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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jonathan Maron

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EXAMINER

KANG, INSUN

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,897	Applicant(s) MARON, JONATHAN	
	Examiner INSUN KANG	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responding to application papers dated 12/10/2003.
2. Claims 1-44 are pending in the application.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 522 and 524 in Fig. 5.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “302A-D” in page 14, line 19.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “410” in Fig. 4 have been used to designate both “code generation objects (page 19, line 17) and “performance measurement objects (page 20, line 14). See also, Fig. 4 for “410” which refers to both “Internet/Intranet” and “performance measurement objects.” Also the reference character “412” for “SAX objects (page 19, line 17)” and “interface objects (page 20, line 15).”

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet

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submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 23-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 23-33 are non-statutory because they are directed to a product comprising a computer readable medium that includes a “transmission-type” medium (i.e. signal, digital and analog communications links) as recited in the instant specification (i.e. page 29). Such a medium does not have a physical structure, rather it is the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism per se. Moreover, it does not fit within the definition of the categories of patentable subject matter set forth in § 101. Thus the claims are non-statutory.

Claims 34-44 are non-statutory because they are directed to an “application tuning tool” without recitation of a computer or a computer-readable medium (excluding a non-tangible medium) embodying the code recited. The application tuning tool is a mere program that does not fit within the definition of the categories of patentable subject matter set forth in § 101.

Therefore, the claims are non-statutory.

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The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101. http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-44 are provisionally rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-28 of copending Application

No.10/730901 hereafter '901 in view of King et al. (US 6,252,592) hereafter King.

The following example is given:

Per claim 1:

'901 claims:

-A method of tuning an application deployed in an application server (A method of tuning an application deployed in an application server, claim 1)

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-deploying the application in the application server (“deploying the application in the application server,” claim 1)

-invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application (“invoking an application tuning server-side component operable to retrieve information relating to parameters of the deployed application that are to be tuned current values of parameters of the deployed application that are to be tuned and measurements of performance of the application,” claim 1)

‘901 does not explicitly recite that the interface displays emphasize importance of a particular parameter over another parameter as recited in the instant claim 1. However, King teaches such an interface using visual elements such as a tab was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify the instant claim to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements in the instant claim by using tabbing order so that the user can quickly navigate among the visual elements in a specific order (i.e. col. 2 lines 23-40).

‘901 further claims:

-receiving specifications of values of application tuning parameters; and tuning the deployed application using the received specified parameter values (“receiving specifications of values of application tuning parameters and tuning the deployed application using the received specified parameter values by modifying the values...application,” claim 1).

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The instant claim does not explicitly recite displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time as recited in '901 claim 1. However, it would have been obvious for one of ordinary skill in the art of program development at the time the instant invention was made to modify the '901 method by omitting the step of displaying a measurement...application performance in real time as recited in '901 claim 1 for the purpose of expediting the method.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-4, 7-9, 12-15, 18-20, 23-26, 29-31, 34-37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot" in view of King et al. (US 6,252,592) hereafter King.

Per claim 1:

Dumarot discloses:

-tuning an application deployed in an application server (i.e. "*adjust system or*

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application parameters in order to optimize the operation of the application,” col. 7, lines 1-25; col. 6 lines 20-26; “an optimization process 300 that the local computer 12 or server 130 uses to optimize software applications 138 and system response or utilization, or to provide recommendations 480... the optimizer 136 gathers relevant system information including: operating system 150 version and release data, installed hardware components, hardware configuration, and software configurations (col. 5, lines 34-41);

-deploying the application in the application server; (i.e. “program application performance on a computer system ... configuration information and performance capabilities based on characteristics of the program/system ...the configuration information and the performance capabilities are used to optimize configuration parameters of the program applications so as to enhance the performance of the workstation in running the program system,” col. 3 lines 40-52)

-invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application (i.e. “The optimization database table ...the optimizer program...on the local computer and/or the remote computer. The optimizer program contains or accesses a dynamic monitor 137 of system and application activity...particular settings of the application that may affect application performance,” col. 4, lines 43-59; “the optimizer 136 gathers relevant system information...the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 37-59; the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 56-59; “control various parameters 420, associated with a particular application name,” col. 5 lines 41-55).

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Dumarot does not explicitly teach that the interface displays emphasize importance of a particular parameter over another parameter. However, King teaches such an interface using visual elements such as a tab was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify Dumarot’s disclosed system to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements in Dumarot by using tabbing order so that the user can quickly navigate among the visual elements in a specific order (i.e. col. 2 lines 23-40).

Dumarot further discloses:

-receiving specifications of values of application tuning parameters (i.e. “The *optimizer program* 136 may contain a graphical user interface 139, used to *specify settings or provide information to the user.*”(col. 4, lines 55-58)

-and tuning the deployed application using the received specified parameter values (i.e. “the optimizer ... can *adjust the following parameter settings* ...to adjust performance,” col. 6 lines 9-26)

Per claim 2:

Dumarot further discloses:

-wherein the step of invoking the application tuning tool is performed in response to an action by an administrator, engineer, or user of the application server (i.e. “user-specified

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preferences,” col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ... application settings,” col. 6 lines 9-20).

Per claim 3:

Dumarot discloses displaying current values of application parameters and measurements of performance of the application (i.e. col. 4, lines 43-59; “the optimizer 136 gathers relevant system information...the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 37-59; the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 56-59; “control various parameters 420, associated with a particular application name,” col. 5 lines 41-55). Dumarot does not explicitly teach that the interface has two portions to display the current values of application parameters and to display the measurements of performance of the application. However, King teaches that storing visual elements by using tabs (i.e. col. 2 lines 23-40) was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify Dumarot’s disclosed system to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements including current values of application parameters and measurements of performance of the application by using separate tabs so that the user can quickly navigate among the displayed elements in a specific order (i.e. col. 2 lines 23-40).

Per claim 4:

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Dumarot further discloses:

-wherein the application tuning server-side component is operable to accept input from the administrator, engineer, or user to specify values of the parameters of the deployed application that are to be tuned (i.e. “user-specified preferences,” col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ...application settings,” col. 6 lines 9-20).

Per claim 7:

King further discloses:

-the interface comprises: a plurality of tabs, each tab operable to display information each tab operable to display information relating to a type of parameters represented by the tab (i.e. col. 2 lines 23-40).

Per claim 8:

King further discloses:

-the interface further comprises: a first portion operable to display the current values of application parameters represented by a selected tab; and a second portion operable to display the measurements of performance of the application (i.e. col. 2 lines 23-40).

Per claim 9:

Dumarot further discloses:

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- the first portion operable to display the current values of application parameters represented by a selected tab is further operable to accept input from the administrator, engineer, or user to specify values of the application parameters. (i.e. “user-specified preferences,” col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ... application settings,” col. 6 lines 9-20).

Per claims 12-15 and 18-20, they are the system versions of claims 1-4 and 7-9 respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

Per claims 23-26 and 29-31, they are the product versions of claims 1-4 and 7-9, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

Per claims 34-37 and 40-42, they are the tool versions of claims 1-4 and 7-9 respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

13. Claims 5, 6, 10, 11, 16, 17, 21, 22, 27, 28, 32, 33, 38, 39, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter “Dumarot,” in view of King et al. (US 6,252,592) hereafter King, and further in view of Applicant's Admitted Prior Art (hereinafter referred to as “APA”) disclosed in the instant application.

Per claim 5:

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Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) but Dumarot and King do not explicitly teach that the values of application parameters comprise at least one of: Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc (“modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine...parameters,” page 1). It would have been obvious for one having ordinary skill in the art to modify Dumarot and King's disclosed system to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 6:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput, Database throughput, HTTP throughput (i.e. “application performance is typically measured in terms of response time, transactions per second, throughput etc,” page 1, lines 13-18).

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Per claims 10 and 11, these claims are other versions of the claimed methods discussed in claims 5 and 6, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth the above.

Per claims 16, 17, 21, and 22, they are the system versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

Per claims 27, 28, 32, and 33, they are the product versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

Per claims 38, 39, 43, and 44, they are the tool versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-R 7:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from

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either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/
Examiner, Art Unit 2193